is nothing to take plaintiff's action for injuries caused by flooding out of the operation of the statute of limitations.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 305.* 9 Va.-W. Va. Enc. Dig. 412.]

**5. Limitation of Actions (§ 55 (7)*)—Injunction—Milling Act.**—Where the predecessors in title of the owner of a dam constructed under the Milling Acts owned the land on both sides of the stream on which the dam was built, a forfeiture provision of the Milling Acts of October, 1785 (12 Hen. St. 187) and September 2, 1811, providing for the forfeiture of one acre of land condemned for the abutment of one end of the dam to rest upon would have no application to take plaintiff's right of action for injuries caused by flooding out of the operation of the statute of limitations.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 305.* 9 Va.-W. Va. Enc. Dig. 412.]

**6. Waters and Water Courses (§ 179 (4)*)—Dams—Injunction.—Evidence—Sufficiency.**—In an action to enjoin the maintenance of a dam which was flooding plaintiff's lands and for damages thereby caused to the alleged lands of plaintiff, evidence held not to show that the dam was constructed under the provisions of any of the Milling Acts of the state.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 250, 263.* 7 Va.-W. Va. Enc. Dig. 534.]

Appeal from Circuit Court, Nottoway County.

Suit for injunction by M. M. Hayden and another against the Norfolk & Western Railway Company. Judgment for plaintiffs, and defendant appeals. Reversed.

*F. S. Kirkpatrick,* of Lynchburg, and *W. Moncure Gravatt,* of Blackstone, for appellant.

*H. H. Watson,* of Crewe, and *T. Freeman Epes,* of Blackstone, for appellees.

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## VIRGINIA RY. & POWER CO. *v.* ARNOLD.

June 14, 1917.

[92 S. E. 925.]

**1. Carriers (§ 247 (1)*)—Carriage of Passengers—Contract Relation.**—The relation of passenger and carrier is one of contract, but it differs from a contract in the ordinary sense in that it is a contract which a common carrier cannot decline to make where the would-be passenger has brought himself within the requirements entitling him to ask the service of carriage and he does in fact ask

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

it; the law in such case imposes the duty on the carrier to render the service, and under proper circumstances the law will imply the existence of a contract of carriage.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 694; 12 Va.-W. Va. Enc. Dig. 849.]

**2. Carriers (§ 244o)—Carriage of Passengers—Creation of Relationship.**—The conscious acceptance by the motorman or conductor of a street car of the offer of a would-be passenger to become such, or the actual meeting of the minds of the would-be passenger and the street railway company in fact upon a contract of carriage, is not essential to the relationship of carrier and passenger.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1115, 1116.* 2 Va.-W. Va. Enc. Dig. 694; 12 Va.-W. Va. Enc. Dig. 849.]

**3. Carriers (§ 247 (3)*)—Carriage of Passengers—Creation of Relationship.**—Where the servant of a street railway in charge of its car does not in fact see an intending passenger, and is not in fact aware that he wishes to become a passenger, the situation, to give rise by implication of law to the relationship of carrier and passenger, must be such that in the exercise of ordinary care in the discharge of its duty as a common carrier the street railway through its employee should have seen the intending passenger or should have been aware of his wish to become such.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 988-990.* 2 Va.-W. Va. Enc. Dig. 694; 12 Va.-W. Va. Enc. Dig. 849.]

**4. Carriers (§ 328 (3), 333 (5)*)—Carriage of Passengers—Negligence of Passenger—Boarding and Leaving Moving Car.**—It is not negligence per se to attempt to alight from or to attempt to board a slowly moving street car.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1369, 1391.* 2 Va.-W. Va. Enc. Dig. 708.]

**5. Negligence (§ 62 (1)*)—Intervening Act.**—The general doctrine of the law of negligence is that, where a cause resulting in injury to a person is set in motion by another, such other will be liable to the person injured, though an intervening act or omission of the person injured was the immediate cause of his receiving the injury, provided the circumstances surrounding him are such that his own act or omission should not be imputed to him as a fault.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 76, 78.* 10 Va.-W. Va. Enc. Dig. 386.]

**6. Carriers (§ 328 (3)*)—Carriage of Passengers—Injury—Boarding Moving Street Car—Proximate Cause.**—Such doctrine is applicable to the conduct of passengers in attempting to board or attempting to alight from slowly moving street cars, and, under it, where the car's being in motion is due to the negligence of the street

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

railway, and contact with it causes the injury, the question of fact is whether the act of the person injured in attempting to board or leave was one of ordinary care; if so, the act cannot be considered the proximate cause of the injury.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1369.* 2 Va.-W. Va. Enc. Dig. 709, 710; 12 Va.-W. Va. Enc. Dig. 851.]

Error to Law and Equity Court of City of Richmond.

Action by J. W. Arnold against the Virginia Railway & Power Company. To review a judgment for plaintiff, defendant brings error. Affirmed.

*A. B. Guigon, H. W. Anderson, Thos. P. Bryan,* and *T. Justin Moore,* all of Richmond, for plaintiff in error.

*Cabell, Garnett & Cabell,* of Richmond, for defendant in error.

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BROWN *v.* THOMAS.

June 14, 1917.

[92 S. E. 977.]

**1. Bills and Notes (§ 517*)—Authority to Fill Blanks in Note.**—Under Negotiable Instruments Law, § 14 (Code 1904, § 2841a, subsec. 14), as to prima facie authority of holder to fill blanks in note, where, in action on such note, the defendant, who delivered the blank note, introduces no evidence to rebut the prima facie authority of plaintiff to fill blanks, such authority is established.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1807-1815.* 2 Va.-W. Va. Enc. Dig. 428, 495.]

**2. Bills and Notes (§ 537 (2)*)—Authority to Fill Blanks in Note.**—Under such statute, requiring blanks in a note to be filled by the holder "within a reasonable time," the question of what is a reasonable time is usually for the jury, as when the facts are doubtful or disputed, and is a question of law when the facts are clearly established, undisputed, or admitted.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1863-1865.* 2 Va.-W. Va. Enc. Dig. 428, 497.]

**3. Trial (§ 139 (1)*)—Court and Jury.**—Where the facts ascertained by demurrer to evidence are such that reasonable minds could draw but one conclusion, it is for the court to draw that conclusion as a matter of law.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 332, 333, 338-341.* 2 Va.-W. Va. Enc. Dig. 497.]

**4. Bills and Notes (§ 60*)—Authority to Fill Blanks in Note—"Reasonable Time."**—Where defendant, in October, 1913, had in-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.